

217 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-S-1160-SB-2007 (O&M)
Date of Decision: 12.05.2023

Jagsir Singh@ Sira & Ors.

...Appellants

Vs.

State of Punjab

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Keshvam Chaudhari, Advocate
for the appellants.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.Shekhawat J.

CRM-41895-2011

1. This is an application filed under Section 482 Cr.PC seeking exemption from filing the certified copy of the judgment and order of sentence dated 13.11.1992 (Annexure A-1) and further praying for taking on record its true copy.

2. For the reasons mentioned in the application, the same is allowed subject to just all exceptions and the appellants are exempted from filing the certified copy of the judgment and order of sentence dated 13.11.1992 (Annexure A-1). Annexure-A1 is taken on record.

CRM-41894-2011

1. Babu Singh son of Bhag Singh, appellant No.2 has moved the instant application under Section 482 Cr.PC with a prayer that the sentences

awarded to the present appellant in the present case may be ordered to run concurrently with the sentence awarded to him earlier vide the judgment of conviction and order of sentence dated 13.11.1992 (Annexure-A1) passed by Sh. H.R. Nohria, Additional Sessions Judge, Barnala in a sessions case No.11 arising out of FIR No.134 dated 06.08.1988, under Sections 18 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Barnala.

2. I have heard learned counsel for the parties and perused the record in this regard. During the course of hearing, learned counsel for the State of Punjab, has submitted a custody certificate and as per the custody certificate, the appellant No.2 Babu Singh has already undergone 10 years of actual sentence in the present case and at present undergoing the sentence in case FIR No.134 dated 06.08.1988 under Section 18 and 25 of the NDPS Act, PS Sadar, Barnala. Even he has undergone about five years of actual sentence in the case arising out of FIR No.134 dated 06.08.1988 under Section 18 and 25 of the NDPS Act, PS Sadar, Barnala after his conviction.

3. Since the appellant No.2 has already undergone his total sentence in the present case, this application has been rendered infructuous and is dismissed as such.

Main case:-

1. The present appeal is directed against the judgement of conviction and order of sentence dated 10.05.2007, passed by the Court of Learned Judge, Special Court Bhatinda, whereby the present appellants were ordered to be convicted for the commission of an offences punishable under Section 15 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred to as the NDPS Act) and were sentenced to undergo rigorous imprisonment for a

period of ten years and to pay a fine of Rs.1,00,000/- each, along with default stipulation.

2. The brief facts of the present case are that a police team headed by SI Bawa Singh was presented at bus stand of Village Chowke on 21.02.2006 and in the meantime, Gurjant Singh son of Balwant Singh resident of village Chowke also reached there and joined the police team. The police party along with Gurjant Singh started from there and reached the culvert of the minor near Village Badhiala, a jeep bearing registration No. HPY-620, Mohindera was seen coming from the side of Village Chowke. Three persons were sitting in the jeep and it was stopped by the police party. On asking by the police, they disclosed their names Babu Singh son of Bhag Singh, Jagsir Singh @ Sira of Nahar Singh and Balwinder Singh @ Pappu son of Dharam Singh, accused. S.I. Bawa Singh raised the suspicion that the bags of some contraband were loaded in the said jeep and they had a choice to get their search conducted either in the presence of a Gazetted Officer or a Magistrate and on this, they opted to get their search conducted in the presence of a Gazetted Officer. Ashutosh Kaushal, DSP, Circle Rampura Phul was called at the spot and he reached at the spot and disclosed his identity to the accused. Again he informed the accused of their right of search before some Gazetted Officer or Magistrate. However, the accused deposed confidence in him and the memos in this regard prepared separately. At the instance of Ashutosh Kaushal, DSP, S.I. Bawa Singh conducted the search and three gunny bags were lying on the front seat of the jeep and one gunny bag was also lying in the jeep. All the four gunny bags were searched and the poppy husk were recovered from the same. Two samples of 100 gram each were taken out from each of the gunny bag and the contents of

the remaining quantity of contraband was weighed and it turned out to be 35 Kgs 900 grams. The parcels were sealed at the spot by sealing them with the seal impressions "BS" of S.I. Bawa Singh. A sample seal was prepared and the seal after use was entrusted to Gurjant Singh, independent witness. The entire case property along with the jeep were taken into possession by the police vide the separate recovery memo and the same were attested by the witnesses. On receipt of the ruqa, a formal FIR was recorded in the police station. S.I. Bawa Singh, recorded the statements of the witnesses and conducted the initial investigation at the spot. On return to the police station, the case property was produced before the Des Raj SHO, who ordered the keeping of the contraband/case property in his proper custody. He also produced the case property before the Magistrate and got the inventory prepared therefrom. After following the due process of law, the case property was properly deposited as per the rules. The report of Chemical Examiner, Patiala was received, as per which the samples were found to be containing poppy husk and after completion of the investigation, the challan was presented by the police.

3. Finding a prima facie case, the learned Trial Court ordered the framing of charge under Section 15 of the NDPS Act, against the accused, to which they pleaded their innocence and claimed trial. Accordingly, the prosecution was ordered to produce the evidence.

4. To support the case of the prosecution against the appellants, the prosecution examined five witnesses. Des Raj, the then SHO Police Station, Rampura was examined as PW-1, who recorded the FIR Ex.PA/1, on receipt of ruqa Ex.PA. Later, S.I. Bawa Singh produced all the accused before him along with the case property consisting of four sample parcels of 100 gram each and

four bulk parcels each containing 35 Kgs 900 grams, duly sealed and one jeep bearing registration No. HPY-620 before him. The articles recovered during personal search were also produced before him and he had also put his seal impressions on the case property as well as the sample parcels. On the next day, he produced all the accused along with case property before the Illaqua Magistrate along with inventory Ex. PC, on which the Court passed the order Ex.PC/1. An application under Section 52-A of the Act Ex. PD was also moved by him before the Court and the Court passed the order Ex. PD/1 and one sample of 100 grams of poppy husk was also taken from each bag in the Court which were sealed with the seal bearing impression "BK". On return to the police station, he deposited the jeep along with other articles with the Additional MHC, Mewa Singh and on the same day bulk parcels were deposited in the godown for NDPS Act cases and eight sample parcels and the sample seals were kept by him in his personal custody on 23.02.2006. He further submitted that he had sent samples to the Chemical Examiner, duly sealed and the report of the Chemical Examiner shows that the seals were intact. The prosecution further examined PW-2 Ashutosh, the then DSP, Rampura, who had reached the place of recovery and witnessed the entire search and seizure operation. 144 Kg of poppy husk was recovered from the appellant's jeep, in which the appellants were also travelling. Even the said search led to recovery of 144 Kg of poppy husk from the four bags. The prosecution further examined Roshan Lal, Junior Assistant, Office of Secretary, State Transport Authority, Shimla as PW-3, who brought the summoned record relating to Ambassador Car bearing registration No. HPY-620, which was registered in the name of Ranbir Singh Mehta son of Hira Lal Mehta, resident

of Village Thanadar, District Shimla. The prosecution further examined C. Krishan Singh as PW-4, who tendered his affidavit Ex.PB into evidence. Even he was cross-examined by the accused at length. The prosecution further examined Bawa Singh SI/ In-Charge Police Post Chowke as PW-5. He supported the case of the prosecution as stated in the present FIR.

5. After the closure of the prosecution evidence, the statements of all the accused were recorded under Section 313 Cr.PC. All the accused/appellants pleaded their innocence. It was stated that at about 08:00AM on 21.02.2006, the appellants were picked up from Truck Union, Rampura in the presence of respectables at the instance of President of the Truck Union, to whom they had opposed in the elections held for the post of President of the Union. They had no connection with the alleged vehicle involved in the present case and falsely involved in the present case without any recovery. The appellants examined Ajaib Singh as DW-1 to prove the aforesaid defence. DW-1 stated that the appellants were taken away from the Truck Union and were later falsely implicated in the present case. In his cross-examination, he admitted that no application was moved to the higher authorities regarding the innocence of the accused. HC Jagir Singh was examined as DW-2, who brought the summoned record that is FIR relating to the dispute of Truck Union, Rampura and the same were exhibited as Ex.DA to Ex.DF. The appellants also examined C.Ranjan Kumar as DW-3, who had produced certain record before the Court. He produced register number 19 and certain entries were made in the register in this regard. However, he admitted that the documents were not prepared in his presence nor were in his hand. He had no personal knowledge regarding the facts of the case. Gurjant Singh, who had initially joined the raid, appeared as a

defence witness and was examined as DW-4, he stated that no poppy husk was recovered from the accused in his presence at any time by police and signatures were obtained on blank papers. Buta Singh son of Chand Singh appeared as DW-5, who stated that on 21.02.2006, he had gone to the Police Station, Rampura regarding the dispute of his son with the owner of Prem Bus Services. The accused present in the Court was sitting in the police station and Jagsir Singh out of them. The members of the Truck Union came there to get them released and the police disclosed that the accused had a dispute with the President of the Truck Union and they had come to the police station due to said reason. After examining the five witnesses, the present appellants closed their defence evidence.

6. I have heard the learned counsel for the parties and with their able assistance, I have gone through the trial Court record carefully.

7. Learned counsel for the appellants vehemently argued that the CFSL form in the present case was not prepared at the spot and the same was prepared subsequently. Still further, no independent witness was examined by the prosecution and the entire case was based on the testimonies of official witnesses only. Gurjant Singh, who had joined the initial process of investigation was examined as a defence evidence and he clearly stated that no recovery was effected in his presence. Apart from that, the contraband was sent to the FSL, without mentioning the names of the accused persons. Learned counsel vehemently argued that the sample was taken for chemical examination by PW-4 C. Krishan Singh and the objection was raised by the Chemical Examiner. No intimation was made by the Chemical Examiner on the case property. Apart from that, the alleged vehicle was a jeep bearing registration

No.HPY-620, whereas as per the PW-3 Roshan Lal, Junior Assistant, Office of Secretary, State Transport Authority, Shimla, it was a registration number of an Ambassador Car. Even no charge with regard to the fake number plate was also framed against the present appellants. Still further, there were several discrepancies in the statements of various prosecution witnesses, which make the entire prosecution story to be unbelievable. PW-2 Ashutosh, the then DSP, Rampura stated that when he reached the spot, the accused were standing on the road side along with the police party, whereas as per the PW-5, SI Bawa Singh, when PW-2 Ashutosh, the then DSP, Rampura reached the spot, the accused were sitting in the jeep and they were apprehended. Still further, PW-2 Ashutosh, the then DSP, Rampura stated that when he reached the spot, an official was sent to bring the weights and scale and he returned after 20 minutes. Whereas, as per PW-5 SI Bawa Singh, the weights and scale were arranged before the arrival of PW-2 Ashutosh, the then DSP, Rampura at 03:00 PM and the HC returned after one hour. Even no conscious possession of the present appellants was proved by the prosecution and the defence evidence was more probable than the prosecution evidence.

8. The submissions made by learned counsel for the appellants have been countered by learned State counsel by submitting that there is no requirement of law that the CFSL form should be filled at the spot and the case of the prosecution cannot be thrown only on the ground that the CFSL form was filled after one day. Still further, learned State counsel submitted that the prosecution had examined five official witnesses and their testimonies could not be discarded only on the ground of their official status. All the official witnesses had no reason to falsely involve the present appellants with such a

huge recovery of 144 Kg of poppy husk. Gurjant Singh, who was associated as independent witness, later joined with the appellants and appeared as a defence witness. Still further, the contraband was sent to the FSL without any unnecessary delay and even the seals on the parcels were found to be intact. Thus, there was no tampering with the parcels containing samples of the contraband and the appellants could not derive any benefit out of the same. Still further, the appellants had used the jeep in the commission of the crime and the jeep was bearing registration No. HPY-620. Later on, it was found that the said registration number was fake and the registration number belong to one Ambassador Car as per the PW-3, Roshan Lal and simply because no charge was framed against the appellants with regard to preparing fake number plate, no benefit will be available to the appellants. Apart from that, minor discrepancies are bound to appear in the testimonies of various prosecution witnesses. The appellants were all sitting in the jeep, from where the recovery of 144 Kg poppy husk was effected and all of them were apparently having conscious possession of the contraband. Learned State counsel further contended that in the present case, the accused/appellants had prepared set of false witnesses and examined them as defence witnesses. However, none of them withstood the test of cross-examination and their testimonies have been rightly disbelieved by the Learned Trial Court. However, I have considered the rival submissions made by learned counsel for the parties and perused the Trial Court record carefully.

9. After hearing learned counsel for the parties and perusing the record, this Court finds no substance in the submissions made by learned counsel for the appellants that the serious prejudice have been caused to the

appellants due to non-preparation of CFSL form at the spot by the police officials. In fact, the recovery of 144 Kg of poppy husk was effected from the possession of the present appellants and the sample seal as well as the bulk parcels were immediately sealed by the police team and the due process of law was followed. Even when the case property was sent to the CFSL, all the parcels were found to be intact. Thus, due to non-filling of CFSL form had caused no prejudice to the present appellants. While considering similar arguments, this Court held in the matter of **Dara Singh Vs. State of Punjab, 2015 (4) RCR Criminal 466** as follows:-

*24. "The non-preparation of the CFSL form at the spot is also no ground to discredit the prosecution. The Division Bench of this Court in case **Pipal Singh Vs. State of Punjab, Criminal Appeal No.D-1039-DB of 2007 decided on 14.11.2014** laid down as under:-*

*"35. Mere this fact that the CFSL form has not been prepared at the spot is no ground to throw away the prosecution's case. Learned counsel for the appellants have not been able to show us any statutory provisions/rules under the NDPS Act or the Code of Criminal Procedure that it is mandatory to prepare the CFSL form at the spot itself. Moreover, in view of the statement of MHC Gurpreet Singh, Head Constable Rajinder Singh and the report of the Chemical Examiner, the samples remained intact so the non-preparation of the CFSL form at the spot has not resulted into any prejudice to the accused and cannot throw any doubt about the intactness of the sample parcels/the case property. In the cases **Kuldip Singh Vs. State of Punjab, Jaswinder Singh Vs. State of Punjab** and **Gurcharan Singh Vs. State of Punjab** (supra) mere non-preparation of the CFSL form at the spot was not the sole ground for*

acquittal.”

10. Further, at the time of effecting the recovery from the present appellants, the police had associated a person Gurjant Singh, as an independent witness. However, during the pendency of the trial, Gurjant Singh was won over by the accused. Consequently, on 10.08.2006, the learned Additional Public Prosecutor gave up PW Gurjant Singh as having been won over by the accused and Gurjant Singh could not be examined as a prosecution witness. However, later on Gurjant Singh appeared as a defence witness i.e DW-4 and tried to support the case of the appellants. However, in his cross-examination, he admitted his signatures on the memos Ex.PH, Ex.PK, Ex.PL Ex.PQ, Ex.PO and Ex.PR. However, he volunteered that the police had obtained his signatures on blank papers. However, apparently he had not made any complaint against taking of his signatures on blank papers by the police. Thus, this Court has no hesitation to hold that DW-4 Gurjant Singh had tacitly admitted the recovery of the contraband from the present appellants. Apart from that, this Court has perused the testimonies of all the five official witnesses examined by the prosecution and their testimonies inspire confidence. Simply because of the fact that the sole independent witness had sided with the accused, is no ground to discard the testimonies of official witnesses, who had withstood the test of cross-examination. There is no rule of law that the official witnesses should be disbelieved on the ground of their official status. Thus, there is no force in the submissions made by the learned counsel for the appellants and the same is rejected by this Court.

11. This Court finds no substance in the arguments raised by learned counsel for the appellants that the samples were sent to the FSL without naming

the present appellants. In fact, the prosecution had led sufficient evidence to show that the samples remained intact and when the samples were received by the FSL, the seals were found to be intact and as per the opinion rendered by the Chemical Examiner, the contents of all the eight samples were found to be containing chura poppy heads. Even, proper details of the FIR, i.e FIR number, date of FIR, offences and the name of the police station were clearly mentioned on the FSL form and even the sample of the seal of the Judicial Magistrate Ist Class, Phul was clearly visible on the CFSL form as well as the samples. Thus, the arguments raised by learned counsel for the appellants in this regard is meritless.

12. Still further, learned counsel for the appellants vehemently argued that the recovery of the contraband is shown from a jeep allegedly bearing registration No. HPY-620. Whereas, as per the testimony of Roshan Lal, Junior Assistant, Office of Secretary, State Transport Authority, Shimla that the said registration number pertain to a Ambassador Car and no charge regarding the fake number plate of the vehicle was framed against the present appellants. In the considered opinion of this Court, the said fact had not caused any prejudice to the appellants. The appellants were already charged with a more grave and serious offence under Section 15 of the NDPS Act. Apart from that, if there was any error on the part of the investigation agency in presenting the challan additionally for affixing a fake number plate on the offending vehicle, it is no ground to discard the prosecution case. At the most, it was a fault on the part of the investigating agency and the present appellants could not derive any benefit from the same. Apart from that, learned counsel for the appellants has referred testimonies of PW-2, Ashutosh, the then DSP, Rampura

and PW-5 S.I. Bawa Singh to contend that there were discrepancies in the statements of various prosecution witnesses. However, such minor discrepancies and contradictions are bound to appear in the testimonies of various prosecution witnesses as they got a chance to appear as witnesses after a lapse of several months. However, such minor discrepancies do not strike the root of the matter and do not effect the prosecution case and the submissions made by learned counsel for the appellants sans merit.

13. Apart from that, it is the admitted case of the prosecution that on 21.02.2006, a police party headed by S.I. Bawa Singh was present and the accused were seen coming from the side of Village Chowke and were signalled to stop. On checking the jeep, four bags containing 144 Kg of poppy husk were recovered from the jeep, in which the appellants were travelling. Learned Trial Court has correctly held that as per the provisions of Section 35 of the Act, the Court shall presume the existence of such mental state for an offence under this Act, which requires a culpable mental state of the accused. This Court shall presume the existence of such mental state. Section 54 of the Act further lays down that in a trial under this Act, it may be presumed unless the contrary is proved that the accused has committed an offence for the possession of which he failed to account satisfactorily. From the testimonies of PW-2 Ashutosh Kaushal, the then DSP, Rampura and PW-5 S.I. Bawa Singh the conscious possession of the poppy husk stood proved and the findings recorded by the learned Trial Court are liable to be upheld. Even the defence evidence led by the appellants did not inspire any confidence. It was falsely alleged that due to dispute of Truck Union, the appellants were falsely involved in the present case. However, the said defence raised by the appellants is liable to be disbelieved

only on the ground that the police had no reason to plant such a huge recovery of 144 Kg of poppy husk on the appellants for such a minor dispute of Truck Union. Apart from that, the appellants also failed to prove on record any evidence that they had complained to the higher authorities in this regard and also failed to establish their connection with the said alleged dispute of Truck Union in any manner.

14. In view of the aforesaid findings, it can be safely concluded that there is no legal infirmity or irregularity in the impugned judgement of conviction and order of sentence dated 10.05.2007, passed by the Court of Learned Judge, Special Court, Bhatinda. As a consequence, the appeal stands dismissed.

15. Since, the main case has been disposed off, all other applications if any, are also disposed off.

16. Case property, if any, be dealt with, and destroyed after the expiry of period of limitation for filing the appeal, in accordance with law.

17. The trial court record be sent back.

12.05.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No